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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,184	09/21/2000	Kyoko Matsumoto	TAK-140-USAP	9127

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Ronald R Snider
PO Box 27613
Washington, DC 20038-7613

EXAMINER

BLECK, CAROLYN M

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/666,184

Applicant(s)

MATSUMOTO ET AL.

Examiner

Carolyn M Bleck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Notice to Applicant

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 October 2003 has been entered.
2. This communication is in response to the RCE filed on 20 October 2003. Claims 1-8 are pending. Claims 1-8 have been amended.

Claim Objections

3. Claim 1 is objected to because of the following informalities: claim 1, lines 14-15, "matching colors eye shadow and rouge" appears to be grammatically incorrect. Appropriate correction is requested.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 6, lines 2-3, "the computer graphing methods" lacks proper antecedent basis. For purposes of applying prior art, "the computer graphing methods" is being interpreted as "the computer graphic methods".

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theuerman et al. (5,959,736) in view of Gourtou et al. (5,478,238).

(A) As per claim 1, Theuerman discloses a method for determining the color type for the selection of cosmetics comprising (col. 3 lines 39-56):

(a) displaying, to the test subject, a plurality of color tones within a range of a mixed color, each of said plurality of color tones having a different amount of primary color portions contained therein and selecting, by the test subject, one of said plurality of color tones as a selection (col. 4 line 55 to col. 8 line 37);

(b) computing, as a function of the selection, a next plurality of color tones for display to the test subject, the next plurality of color tones representing, in primary color portions, a closer partial range of the mixed color about the selection (col. 4 line 55 to col. 8 line 37); and

(c) repeating the steps of selecting and computing, with each next plurality of color tones displayed representing a closer partial range of the mixed color about a respectively preceding selection, until a final color tone is selected, determining, based on the final color tone, a color type of the test subject, and assessing, on the basis of the determined color type, color tones, corresponding to the determined color type, of colors other than the mixed color for use in at least one of hair color, clothing, cosmetics, and interior design applications (col. 4 line 55 to col. 8 line 37).

Theuerman fails to expressly disclose obtaining through computer graphic methods an average face composition of a plurality of races by a survey of average facial features, skin color, lip color, and eye color of a plurality of people.

Gourtou discloses the step of creating a palette of reference foundation colors substantially covering a representative sample of a population of individuals concerned, said database containing at least the data specified above with reference to the method, namely the skin color of each individual making up the database, and a foundation color reference associated with one or more skin colors in the database (col. 7 lines 42-57). Further, Gourtou discloses in Figures 2-11 the average colors (reads on "average face composition") determined for different races of people using a

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computer and video (see Caucasian) (Figures 2-11, col. 2 line 1 to col. 3 line 22, col. 5 line 55 to col. 10 line 7, col. 10 line 10 to col. 18 line 11).

At the time the invention was made, it would have been obvious to include the features of Gourtou within the method of Theuerman with the motivation of providing a simple, reliable, and reproducible means for determining makeup colors for a person (Gourtou; col. 1 lines 50-62).

As per the recitation of "eye shadow and rouge cosmetics", it is respectfully submitted that both Theuerman and Gourtou disclose determining the colors for makeup and cosmetics, and therefore, it is respectfully submitted that cosmetics would include rouge and eye shadow.

(B) As per claim 2, Gourtou discloses color maps (see Figure 8) are created according to different races (Figures 2-11, col. 2 line 1 to col. 3 line 22, col. 5 line 55 to col. 10 line 7). The motivation for combining Gourtou within Theuerman is given above in claim 1, and incorporated herein.

(C) As per claim 3, Gourtou discloses color maps (see Figure 8) are created according to different races and eye color, and wherein colors are recommended for selection based on the color maps (Figures 2-11, col. 2 line 1 to col. 3 line 22, col. 5 line 55 to col. 10 line 7, col. 10 line 10 to col. 18 line 11). The motivation for combining Gourtou within Theuerman is given above in claim 1, and incorporated herein.

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(D) As per claims 4 and 5, Gourtou discloses a chart for color showing the saturation on the latitudinal axis and the luminance on the longitudinal axis (Figures 2-11, col. 2 line 1 to col. 3 line 22, col. 5 line 55 to col. 10 line 7, col. 10 line 10 to col. 18 line 11). Although, the chart does not expressly show hues and tones on the chart or "Active-Gentle" and "Fresh-Elegant" on the chart, it is respectfully submitted that displaying hues and tones would be an obvious variation of Gourtou's charts. The motivation being to provide a simple, reliable, and reproducible means for determining makeup colors for a person (Gourtou; col. 1 lines 50-62).

(E) As per claims 7 and 8, Gourtou discloses the average colors for a face including the eyes and skin color (reads on "mouth") (Figures 2-11, col. 2 lines 1-49). The motivation for combining Gourtou within Theuerman is given above in claim 1, and incorporated herein.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Theuerman et al. (5,959,736) in view of Gourtou et al. (5,478,238) as applied to claim 1, and further in view of Horii (5,850,463).

(A) As per claim 6, the teachings of Theuerman and Gourtou and the motivation for their combination as given in the rejections above are incorporated herein.

Theuerman and Gourtou fail to expressly disclose using morphing technology.

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Horii discloses using a method for merging facial images, including synthesizing facial images by combining multiple images (col. 3 lines 35-61).

At the time the invention was made, it would have been obvious to include the features of Horii within the method taught collectively by Theuerman and Gourtou with the motivation of providing a simple, reliable, and reproducible means for determining makeup colors for a person (Gourtou; col. 1 lines 50-62).

Response to Arguments

9. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied prior art teaches a method for finding a most likely matching of a target facial image in a database of facial images (5,450,504), and a process for making up the face, particularly the eyes, and device for carrying it out (5,495,338).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (703) 305-3981. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (703) 305-9588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 306-1113.

12. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9306 or (703) 872-9326 [Official communications]

(703) 872-9327 [After Final communications labeled "Box AF"]


(703) 746-8374 [Informal/ Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor (Receptionist).



CB

January 5, 2004


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600